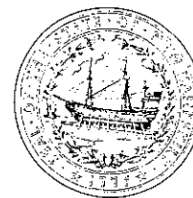




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 4, 2004

Mr. Terence Murphy
Commissioner
Hebron Bridgewater Refuse
Disposal District
297 Mayhew Turnpike
Bridgewater, NH 03222


Re: Docket No. AO ARD 04-002 – Administrative Order by Consent Agreement
Docket No. AF 04-003 – Administrative Fine by Consent Agreement

Dear Mr. Murphy:

Enclosed for your records is a copy of the Administrative Order by Consent Agreement ("AOC"), and the Administrative Fine by Consent Agreement ("AFC") in this matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on May 4, 2004. Please note that section V, paragraph 3 of the AOC requires that the Hebron Bridgewater Refuse Disposal District ("the District") make a cash donation in the form of a certified check to the Hebron Village School in the amount of \$1,500 within thirty (30) days of the effective date of the AFC. Please ensure that a copy of the certified check is forwarded to my office no later than June 3, 2004.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,


Michael S. Safadi,
Legal Assistant

cc: Robert R. Scott, Director, DES Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Pamela G. Monroe, DES ARD
Michael O'Brien, DES ARD
Richard Reed, DES WMD
DES Public Information Officer
R. Kurowski, USEPA, Region I
Town of Hebron, Selectmen's Office
Town of Bridgewater, Selectmen's Office
Maureen Smith, NH DOJ



The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner



Hebron Bridgewater Refuse Disposal
District
297 Mayhew Turnpike
Bridgewater, NH 03222

**ADMINISTRATIVE ORDER
BY CONSENT
No. ARD 04-002**

A. INTRODUCTION

This Administrative Order by Consent ("the Order") is issued by the Department of Environmental Services, Air Resources Division to the Hebron Bridgewater Refuse Disposal District ("the District") pursuant to RSA 125-C:15. This Order is effective upon signature by both parties.

B. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. The District consists of the Town of Hebron and the Town of Bridgewater, New Hampshire ("the Towns") which are duly constituted municipalities of the State of New Hampshire, having a mailing address of 297 Mayhew Turnpike, Bristol, New Hampshire.

C. STATEMENTS OF FACTS AND LAW

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorize the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation, or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 600.
3. RSA 125-I authorizes DES to regulate releases of toxic chemicals into the ambient air. RSA 125-I:6 authorizes the Commissioner of DES to adopt rules relative to the establishment of ambient air limits ("AALs") for each regulated toxic air pollutant ("RTAPs") and methodologies for determining whether an emissions of toxic air pollutants will exceed the applicable AAL at the source's compliance boundary. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rule Env-A 1400.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-1370 • Fax: (603) 271-1381 • TDD Access: Relay NH 1-800-735-2964
DES Web site: www.des.nh.gov

4. DES published the first list of regulated toxic air pollutants, their classification, and AALs in *Rulemaking Register* on May 8, 1998.
5. Env-A 101.227(c) defines RTAPs as "any substance or compound which has been added to the list of regulated toxic air pollutants pursuant to RSA 125-I:4,V and Env-A 1400".
6. Sources subject to Env-A 1400 must demonstrate compliance with the rule and applicable AALs by May 8, 2001.
7. The District owns and operates a Kelley-Hoskins municipal waste incinerator ("the Incinerator") located at 290 Dick Brown Road, Bridgewater, New Hampshire 03222 ("the Facility").
8. The Incinerator has a maximum operating rate of 1,200 pounds per hour of Type 1 waste.
9. On January 5, 1994, DES issued the District Permit No. PO-C-181 ("the Permit") for the operation of the Incinerator at the Facility. The expiration date of the Permit was October 31, 1997.
10. Env-A 608.10 requires the owner or operator of any stationary source or device that has been issued a permit to operate to submit a permit application 90 days prior to the expiration date of the existing permit.
11. On August 2, 1999, DES sent the District a letter stating that the Permit expired on October 31, 1997, and requested that a permit application be submitted to DES within 30 days. On October 21, 1999, DES received a permit application from the District for a renewal of its Permit with updated information received on June 30, 2000.
12. On June 14, 2000, DES conducted a compliance inspection of the Facility. As a result, a report was written and sent to the District on January 11, 2001. The report stated that the Permit had expired on October 31, 1997 and that DES received permit applications on October 21, 2000 and follow-up information on June 30, 2000.
13. On August 28, 2000, DES sent the District a letter that stated the permit application received on October 21, 1999 with updated information received on June 30, 2000, was found to be administratively incomplete. Accordingly, DES requested that the District submit additional information within 30 days. On December 2, 2000, DES received the requested information from Barnard Survey Associates, Inc. on behalf of the District.
14. On July 18, 2002, DES sent the District a letter stating that, based upon review of the permit application and the results of air dispersion modeling performed by DES, that the Incinerator, if operated as proposed, would result in predicted exceedences of the AALs for the RTAPs lead, chromium and hydrochloric acid. DES further stated that pursuant to Env-A 615.02(a) a permit would not be issued and included a list of options the District could take to achieve compliance with Env-A 1400.

15. On July 26, 2002, DES received a Draft Plan from the District for upgrading the Facility's recycling, and the Incinerator, as well as plans on closing its landfill. Specifically, the Draft Plan stated that the District intended to replace the Incinerator in calendar year 2004, with a new municipal waste incinerator outfitted with air pollution controls.

16. On September 27, 2002, DES attended a meeting at the Facility to discuss the District's plan to replace the Incinerator with a new incinerator. During the meeting, representatives from the District informed DES that before the new incinerator could be purchased, that approval must be obtained from the Towns. The District also stated that if funding was not obtained, that the District would shutdown the Incinerator and dispose of the municipal waste by means other than incineration.

17. At the meeting on September 27, 2002, DES requested that the District submit a list of milestones and associated dates regarding its plans to purchase and install a new incinerator and its plans to shutdown the Incinerator.

18. On October 4, 2002, DES sent a letter to the District as a follow-up to the September 27, 2002 meeting. In the letter, DES again requested that the District submit a list of milestones and associated dates for installing the new incinerator. DES requested that the District respond in writing by October 30, 2002.

19. On November 1, 2002, DES called the District and inquired into the status of the requested information. The District stated that the letter was not complete and that the District was in the process of drafting the requested response. As a follow-up to the phone conversation, DES received a facsimile from the District. The facsimile was a copy of a letter the District received on October 23, 2002, from ACS, Inc., the manufacturer of the municipal waste incinerator the District indicated it intends on installing. The letter lists ACS, Inc.'s proposed schedule regarding the installation of the new incinerator by spring 2004.

20. On November 12, 2002, DES called the District and again requested the status of the information requested on September 27, 2002. The District informed DES that the letter was not complete and that additional time was needed.

21. On March 12, 2003, the District called DES and said that the Towns approved funding for construction of a building that would house the new incinerator. However, the District is still waiting for funding for the purchase of a new incinerator.

22. On October 15, 2003, DES received a permit application from the District for the installation and operation of a new incinerator.

23. On October 30, 2003, DES sent the District a letter stating that the permit application sent October 15, 2003, is administrative complete.

24. On January 23, 2004, DES issued the District Temporary Permit No. TP-C-0002 ("Temporary Permit") for the operation of the new incinerator.

25. On March 4, 2004, DES received a letter from the District which states that the District intends to install a new incinerator and will not retrofit the existing Incinerator.

D. DETERMINATION OF VIOLATIONS

1. The District has violated Env-A 608.10(a) by failing to submit a permit application within 90 days prior to the expiration date of its state permit to operate.
2. The District has violated Env-A 608.12(a) by operating the Incinerator without a valid permit.
3. The District has violated RSA 125-I:5 and Env-A 1404.01 by failing to demonstrate compliance through one or more than one of the methods specified in Env-A 1406.01.
4. The District has violated Env-A 1400 by operating the Incinerator in violation of the AALs for lead, chromium and hydrochloric acid.

E. ORDER

Based on the above findings and determinations, for failing to comply with RSA 125-I and Env-A 1400, DES hereby orders the District and the District agrees, to undertake and complete the following actions within the time frames specified.

1. **By April 31, 2004**, the District shall submit a Waste Management Plan ("the Plan") that identifies how the District will comply with N.H. Admin. Rules Env-100 *et seq.* on or before October 15, 2004. The Plan must include milestones and associated dates for the installation of a new incinerator. In addition, the Plan must include a contingency describing an alternate waste management option to be implemented in the event that the installation of a new incinerator is delayed or is not approved by the Towns.
2. **By June 7, 2004**, the District shall submit a progress report. If the District is not on schedule, any delays which have occurred, or are expected to occur, should be discussed and explained along with an explanation as to how the District will address such delays and still achieve compliance by October 15, 2004.
3. **By June 7, 2004**, the District shall submit to DES a closure plan for the existing Incinerator which demonstrates that the existing incinerator will be shutdown no later than October 15, 2004.
4. **By October 15, 2004**, the District shall provide documentation and certify to DES that the Facility is operating in compliance with N.H. Admin. Rules Env-A 100 *et seq.*
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Mary Ruel, Enforcement Section Supervisor
Compliance Bureau
DES Air Resources Division
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095

F. STIPULATED PENALTIES

1. The District agrees to pay a stipulated penalty of \$2,000 for each month after October 15, 2004, that it operates the Incinerator out of compliance with Env-A 1400 as determined by DES. If stipulated penalties become due, payment shall be by certified check made payable to "Treasurer, State of New Hampshire" and mailed to DES Legal Unit, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095, attn: Michael Sclafani, within 15 days of the date of notice from DES that payment is required.
2. Neither the District or the Towns, shall be held liable for a failure to comply with any of the terms of this Agreement when such failure has been caused solely by forces majeure or acts of God; or other circumstances beyond the reasonable control of the party, and without fault on the part of the party involved; provided such party uses due diligence to remedy such default which can be remedied.

G. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, the District agrees that this Order shall apply to and be binding upon signature by the District, its officers, directors, successors and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, the District waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Air Resource Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.
3. By execution of this Administrative Order by Consent, the District waives any right to a hearing on or appeal of the stipulated penalties specified in Section F of this Order provided by statute, rule, or common law, and waives any right to object to the fine(s) in any collection action initiated by DES resulting from the non-payment of the stipulated penalties by the District.
4. The effective date of this Administrative Order by Consent shall be the date on which it is signed by the authorized representatives of the District, the Director of the Air Resources Division and the Commissioner of DES.
5. No failure by DES to enforce any provision of this Administrative Order by Consent after any breach or default shall be deemed a waiver of its rights with regards to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

The Hebron Bridgewater Refuse Disposal District

COPY
By: Duly Authorized
Hebron Bridgewater Refuse Disposal District

4/22/04
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By: Duly Authorized
Hebron Bridgewater Refuse Disposal District

4/28/04
Date

Department of Environmental Services

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Robert R. Scott, Director
Air Resources Division

4 MAY 04
Date

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Michael P. Nolin, Commissioner
Department of Environmental Services

05 04 04
Date

cc: G. Rule, DES Legal Unit
R. Reed, DES-WMD
M. Smith, NH AGO
R. Kurowski, EPA Region I
Public Information Officer, DES PIP Office
File AFS# 3300900011